



THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 09/923,045
Applicant : DAVID E. RICHARDSON
Filed : AUGUST 6, 2001
Title : DYNAMICALLY DRILLING-DOWN THROUGH A HEALTH
MONITORING MAP TO DETERMINE THE HEALTH STATUS AND
CAUSE OF HEALTH PROBLEMS ASSOCIATED WITH NETWORK
OBJECTS OF A MANAGED NETWORK ENVIRONMENT
Confirmation No. : 1209
Art Unit : 2173
Examiner : Hailu, Tadesse
Atty Docket No. : 10990318-2
Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Sir:

Pursuant to the "New Pre-Appeal Brief Conference Pilot Program" (USPTO OG Notices: 12 July 2005), which became effective July 12, 2005, Applicant respectfully request that a panel of examiners formally review the legal and factual basis of the rejections in the Final Office Action mailed October 3, 2005, related to the captioned patent application.

The instant request is being filed with a Notice of Appeal in compliance with 37 §CFR 41.31. Also, the instant request is being filed prior to the filing of an appeal brief.

Applicant respectfully asserts that the above-noted rejections are factually deficient, and requests the application be allowed on the existing claims, or alternatively, that a prosecution on the merits be reopened. If the application is not allowed on the existing claims, then proposed changes which the review panel may have for Applicant which, if accepted, may result in an indication of allowability for the contested claims, would be appreciated.

GROUND OF REJECTION TO BE REVIEWED

The sole ground of rejection to be reviewed is whether claims 41-56 are unpatentable under 35 U.S.C. § 102(e) over U.S. Patent 6,374,293 to Dev, *et al.*

(hereafter, "Dev"). Claims 41-64 are currently pending and are the only rejected claims on appeal.

ARGUMENT

A. 37 C.F.R. §1.104(c)(2) – Examiner Fails to Clearly Explain the Pertinence of the Cited Reference

According to 37 C.F.R. §1.104(c)(2), "when a reference is complex or shows or describes inventions other than that claimed by the applicant... the pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified." In the Examiner's rejection of claims 41 – 64, the Examiner failed to meet this standard. Specifically, the Examiner has failed to clearly explain the pertinence of the reference and the portions of the reference upon which the Examiner relies.

In the claim rejections the Examiner first quotes or summarizes portions of Applicant's claim, and then refers to various figures or blocks of text in Dev, which often are made up of disjointed blocks of text or to many lines of text. After referring to these figures and/or blocks of text, the Examiner fails to provide any explanation of their relevancy to the particular rejection.

As an example, the Examiner addresses Applicant's claim 41 limitation "receiving a user selection to modify one of the plurality of group view containers," in the second paragraph of page 4 in the Final Office Action. There, the Examiner states "Dev further describes that said network management system includes at least a user interface, that will enable user to interact, select, modify, etc. with one of the plurality of views (topological or location) of the network," and refers to "column 3, lines 66 – column 3 [sic], lines 20," and also to, "column 14, lines 57-75." (See, Final Office Action, page 4, ¶2.) The Examiner provides no explanation whatsoever as to the pertinence of those two blocks of the Dev reference. The Applicant is wholly left to guess as to why or how those portions of the Dev reference are applicable to this limitation of Applicant's claim 41.

Similar omissions of a clear explanation for portions of the Dev reference relied upon are found throughout the Final Office Action, including:

- on page 3, paragraphs 3 and 4;
- on page 4, paragraphs 1, 2, 3, 4, 5, and 6;
- on page 5, paragraphs 1, 2, 3, 4, and 5;
- on page 6, paragraphs 1, 2, 3, 4, 5, and 6; and
- on page 7, paragraphs 1, 2, and 3.

Because the Examiner has failed to meet the standard specified in 37 C.F.R. §1.104(c)(2) by referring only to large blocks of text or figures, without clearly explaining their pertinence in rejecting Applicant's claims, Applicant respectfully requests that the present application be allowed, or alternatively, that prosecution on the merits be reopened.

B. MPEP §706.02(IV) – The Dev Reference Fails to Teach All Aspects of Applicant's Claimed Invention

MPEP §706.02 states that, “for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly.” In the Final Office Action, the Examiner either quotes or summarizes Applicant's claim limitations, in piece-by-piece fashion, and then refers to portions of the Dev reference. However, in several such comparisons, those portions of the Dev reference clearly fail to teach the claim limitation. Therefore, as the Dev reference fails to teach every aspect of Applicant's invention as claimed, it clearly fails to anticipate the claims of the present application, under the guidance of MPEP §706.02.

As an example of one such instance, claim 41 recites, “presenting to the user, in response to the user selection, a user interface listing the user-definable group view attributes for the selected group view container; and receiving via the user interface a user modification of one or more of the listed group view attributes” According to the Examiner, “Dev ... describes presenting to the user via the user interface [a] listing (see e.g., Alarm log display attributes, Fig. 10) of the network device attribute,” and then refers to, “column 12, lines 22-56, column 13, lines 7-19, and column 13, lines 32-44,” of the Dev reference. (See Final Office Action, page 4, ¶3.)

However, the blocks of the Dev reference cited by the Examiner fail to teach a user interface as recited in claim 41. The first block referred to, column 12, lines 22-56, as discussed in paragraph 12 of Applicants' August 2, 2005 response, discloses a hierarchy of views and entities, which a user can click, to obtain a view of the next lower level in the hierarchy. Particularly, this section describes different location display views of a network, where an icon representing a network location in the view of a network (Fig. 7A) may be clicked on to obtain the next lower level view (e.g., a view of the network location selected, Fig. 7B). Likewise, an icon in the location view (Fig. 7B) may be clicked on to obtain a lower level view (e.g., a view of a single room at the location - Fig. 7C). Dev, however, does not teach or suggest that this user interface can be used to modify a group view attribute.

In response to this argument, the Examiner states in the current Office Action that "since Dev's system is highly flexible and user configurable (column 3, lines 66-column 4 lines 20), using the user interface shown in Fig. 7C, [the] user can configure or modify the displayed network devices contained within a computer lab."

Even assuming the Examiner is correct and the relied on section discloses that the Dev system is "highly flexible and user configurable," there is nothing in the disclosure of Dev that even remotely suggests using the display views of Fig. 7 to modify a group view attribute. Moreover, the Examiner has not provided any citation to any portion of Dev that allegedly discloses that display views of Fig. 7 can be used in such a manner.

The second block to which the Examiner refers also fails to disclose a user-interface as recited in claim 41. This block, column 13, lines 7-19, as discussed in paragraph 11 of Applicants' prior response, discloses traversing between location and topological views, by clicking icons or by pull-down menus. This block, however, fails to disclose a user-interface that is presented to the user that lists user-definable group view attributes that may be modified by the user and the Examiner has not cited to any disclosure of Dev that cures this defect.

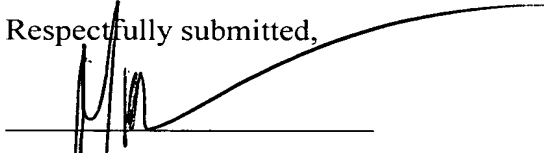
The third block, column 13, lines 32-44, discusses an icon manager that is an

instantiated C++ class for displaying icons via the above-discussed display views illustrated in Fig. 7 of Dev. As such, it likewise fails to disclose a user-interface that is presented to the user that lists user-definable group view attributes that may be modified by a user.

Therefore, the numerous portions of the Dev reference relied on by the Examiner fail to disclose a user interface as recited in claim 41. Other aspects of the claimed invention are similarly not taught by the Dev reference. Since the Dev reference does not teach every aspect of the claimed invention, under MPEP §706.02, it cannot be the proper basis for a 35 U.S.C. 102 rejection of anticipation, and thus the Examiner has failed to establish a *prima facie* rejection. Therefore, Applicant respectfully request that the present application be allowed, or alternatively, that prosecution on the merits be reopened.

December 2, 2005

Respectfully submitted,



Michael G. Verga
Reg. No. 39,410